IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO : 15196 of 2004

Between:

1 R. Sambaiah, S/o. R. Satyanarayana,
R/o. 5-36/185 (Plot 185), Prashanthinagar Colony,
Kukutpally, Hyderabad - 500 072.
2 M. Raghunandan, S/o. M. Sriramulu,
R/o. 5-35/114 (Plot No. 218/A), Prashanthinagar Colony,
Kukutpally, Hyderabad - 500 072.
3 D. Narasimha Murthy, S/o. Rama Sastry,
R/o. 5-5-35/53 B (Plot No.144) Prashanthinagar Colony,
Kukutpally, Hyderabad - 500 072.
4 P. Kranthilal, S/o. Late P. Satyanarayana,
R/o. Plot No. 166, Prashanthinagar Colony,
Kukutpally, Hyderabad - 500 072.

..... PETITIONERS

AND

1 Hyderabad Urban Development Authority, Rep. by its Vice-Chairman
Begumpet, Hyderabad.
2 The Commissioner, Kukutpally Municipality,

Ranga Reddy District.

3 Andhra Pradesh Central Power Distribution Corporation Limited,
(APCPDCL) Kukutpally, Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the respondents in converting the open space and a nursery school area and blocking of a road in the revised lay out of Prashanthinagar Colony belonging to Pushpaknagar Cooperative House Society Limited in Survey No. 389, 391 to 400, situate at Kukatpally Village Ranga Reddy District for establishment of an electrical substation by the 3rd respondent as wholly illegal, untenable and unsustainable and pass such other order or orders as may deem fit and proper in the circumstances of the case, as otherwise the petitioner will suffer grave and irreparable loss.

Counsel for the Petitioner : MR.V.HARI HARAN

Counsel for the Respondent No.1: MR.B.VISWANATHA REDDY (Not Present).

Counsel for the respondent No.2: Mr. R. Thimma Reddy.

Counsel for the respondent No.3: Smt. M.Vinobha Devi.

The Court made the following :

ORAL ORDER:

(per Hon'ble The Chief Justice)

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1. Four petitioners have approached this Court in this petition purported to be filed in public interest questioning the action of 2nd and 3rd respondents in trying to develop a piece of land measuring about 1000 square yards behind the wall of Godrej godown, on south side, in the colony developed by Pushpaknagar Cooperative House Building Society Limited (for short 'the Society'). Challenge to the development of the said piece of land is on the ground that in the lay out plan, as approved by 1st respondent, the area is a part of park, road and earmarked for nursery school. Erection of 33 KVA Transformer without modification of the lay out plan is bad in law and is not for the benefit of the residents of the Society.

2. It is alleged that Prashanthi Nagar Colony was formed in the year 1982-83 and lay out in Survey Nos.389, 391 to 400 of Kukatpally village, Rangareddy District, was approved in favour of the Society. 222 residential plots have come down. In the lay out, 40 feet road, by-lanes and 100 feet road were marked. Lay out also left open spaces meant for park, lung area, school and other requirements, such as common amenities and facilities for the benefit of the residents. It is stated that in one corner there is considerable open space left open, meant to be developed as park, part of which is meant for road and part of it for nursery school. This area, apart from other area which has been left open, vests in the Society and obviously will have to be kept under the management of the Municipality for the purpose of development as a part of the scheme. The 2nd respondent – Municipality, in violation of the lay out plan, has prompted 3rd respondent to erect 33 KVA Transformer without any entitlement.

3. 2nd and 3rd respondents have filed their respective affidavits and additional

affidavit has been filed today on behalf of 2nd respondent. In the affidavit filed by 2nd respondent – Municipality, it is stated that the Organising Secretary, Prashanthinagar Welfare Association (for short 'the Association') had addressed a letter on 28.05.2002 to the Divisional Engineer, IDPC Sub-Station, Hyderabad, with copy to the Commissioner, Kukatpally Municipality and others informing the decision of the Association to handover a part of plot of 1000 square yards behind the wall of Godrej godown, on south side, for erecting sub-station. The letter also conveyed the feelings of the members of the Association and residents of the locality that residents will not have any low voltage/high voltage problem and will not have any interruption in the supply of electricity and request was made by the Association to accept the matter. Separate affidavit is also filed on behalf of 3rd respondent by Mr.N.S.R. Murthy, Assistant Divisional Engineer, A.P.C.P.D.C.L., stating that the Association has decided to handover the part of plot for erection of 33/11 KV sub-station. Kukatpally Municipality had passed resolution on 30.09.2003 to proceed with the construction activity of electrical sub-station. Therefore lot of money has been invested by 3rd respondent in taking steps to erect sub-station, tenders were invited, work was undertaken and considerable work has already been done.

4. Writ petition has been filed and respondents 2 and 3 have questioned the bona fides of four writ petitioners, who are plot owners of Society's land, to file such writ petition which is not in the interest of the public.

5. We have given due consideration to the submissions made at the Bar. Learned counsel for the petitioners has placed reliance upon an order passed by us in W.A.No.746 of 2003 and batch, dated 11th September, 2003 holding that once lay out plan was approved, the same cannot be altered and in case area is reserved for park, no further part of the land can be handed over to any Association except for developing it as park. To the same effect, he placed reliance upon a decision rendered in **CO-OPERATIVE HOUSING SOCIETY LIMITED Vs. MUNICIPAL CORPORATION OF HYDERABAD (1).**

6 . Learned counsel for respondent No.3 has submitted that erection of electrical sub-station is meant for the benefit of the members of the Society in general and nearby public at large and will augment uninterrupted supply of power, and thus is in public interest. Developmental activity is being undertaken on the consent given by the Association, representing the members of the locality.

7. Four writ petitioners own separate plots, which are not in close proximity to the place where 33 KV sub-station is being erected. They own plot Nos.185, 218/A, 144 and 166 respectively. It is not disputed that two out of four are members of the Association and all are

(1) 2001 (5) ALT 737 (DB).

members of the Society. As per the writ petitioners, lay out has left open spaces for park, lung area, school and other common amenities and facilities for the benefit of the residents of the Society for whose benefit the colony has been developed. It consists of 222 plots. The plot in question measures 1000 square yards, and a very small extent of open space, as per the lay out plan, is meant for park. It covers a part of 33 feet wide road, a part of open space meant for park and also a part of open space meant for nursery school. As per the plan shown to us, this 1000 square yards area is in one corner, on one side of which is proposed 33 feet wide road and one side of which is a part of open space meant for park and on one side of it is the wall of godown of Godrej Company. It virtually do not prejudicially affect any of the plot owners of the Society. Now setting up of electrical sub-station is such an activity which cannot be termed to be a non-welfare activity meant for the benefit of a few selected. The sub-station is being erected in order to see that people in the area get uninterrupted supply of power without any low voltage/high

voltage problem. For such an activity, consent has been given by the Association. It is a representative body of the members of the Society meant for the welfare of the plot owners. Despite the fact that petition was resisted by the respondents that with the consent of the Association they executed a plan to erect sub-station, petitioners had neither impleaded the Association nor the Society as party to the writ petition. The land will not vest for managing the affairs by the Municipality, but it actually vests in the Society. Petitioners are only four plot owners out of 222 plot owners. No doubt it may not be permissible to change the purpose as enshrined in the lay out plan, but the question would be who can raise objection for the same. The Association and the Society are concerned and are necessary parties. In W.A.No.746 of 2003 and batch also similar question had arisen and Society had agreed for construction of Temple in part of the land and Temple has been developed and that portion was not interfered with in the appeal, but an order was issued restricting the Temple area since majority of the persons was opposing changing of lay out. It is not that lay out cannot be changed. Lay out can be permitted to be changed, but making use of the open area for such of the activities, which would come within the ambit of providing common facilities or common amenities, is not prohibited. In case open area is permitted to be utilised for a facility, which is a common facility or common amenity, in exercise of writ jurisdiction, there cannot be any restraint on respondents 2 and 3 since it would not be in the larger public interest to stop such activity and neither respondents 2 and 3 are to be benefited of such activity nor any prejudice being caused is shown by the petitioners, more particularly Society and Association are not parties to the writ petition. We are not inclined to issue any direction in this writ petition. Accordingly writ petition is dismissed. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 09.11.2004.

VRK.

To

1 The Vice-Chairman, Hyderabad Urban Development Authority, Begumpet, Hyderabad.
2 The Commissioner, Kukutpally Municipality, Ranga Reddy District.
3 Andhra Pradesh Central Power Distribution Corporation Limited, (APCPDCL) Kukutpally, Ranga Reddy District.

4. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.P.NO. 15196 OF 2004.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 09.11.2004.